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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ROSEMARY BRIM DAVIS,

10 Plaintiff,

11 v.

12 HOMECOMINGS FINANCIAL,

13 Defendant.

Case No. C05-1466RSL

ORDER DENYING MOTION TO
REMAND TO STATE COURT

14
15 **I. INTRODUCTION**

16 This matter comes before the Court on plaintiff's motion to remand this case to
17 King County Superior Court. (Dkt. #103). Plaintiff argues that this Court no longer has
18 jurisdiction over this action because it certified a Washington-only class, so the amount in
19 controversy is undisputedly less than the \$5 million necessary for removal under the
20 Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2.

21 For the reasons set forth below, the Court denies the motion.

22 **II. DISCUSSION**

23 The Court has already considered and ruled on whether it has jurisdiction over this
24 case in its order granting plaintiff's motion for class certification. (Dkt. #84). In that
25 order, the Court explained:

1 Now that the Court's inquiry is limited to a Washington state class, it appears that
2 the amount in controversy is less than the \$5 million necessary for removal under
3 CAFA. Plaintiff argues that the action would not be subject to removal. Although
4 that argument is correct, the action was properly removed because at the time, the
5 amount in controversy exceeded \$5 million based on the proposed nationwide
6 class. Because CAFA was enacted so recently, the parties have not cited any cases
7 under that statute analyzing whether jurisdiction is lost if the amount in
8 controversy is reduced after removal. Courts considering the issue under the
9 diversity statute, however, have concluded that "diversity jurisdiction is
10 determined at the time the action commences, and a federal court is not divested of
11 jurisdiction . . . if the amount in controversy subsequently drops below the
12 minimum jurisdictional level." Hill v. Blind Indus. & Serv. of Md., 179 F.3d 754,
757 (9th Cir. 1999). Furthermore, although CAFA does not address this issue,
courts "presume that Congress is aware of the legal context in which it is
legislating." Abrego v. Dow Chem. Co., 443 F.3d 676, 683-84 (9th Cir. 2006)
(citing Cannon v. Univ. of Chicago, 441 U.S. 677, 696-97 (1979) and United
States v. LeCoe, 936 F.2d 398, 403 (9th Cir. 1991) ("Congress is, of course,
presumed to know existing law pertinent to any new legislation it enacts")).
Despite its presumed knowledge of the diversity laws, there is no indication that
Congress intended to alter the established authority regarding subsequent changes
to the amount in controversy. Accordingly, the Court continues to have subject
matter jurisdiction over this matter even though consideration of a Washington-
only class has reduced the amount in controversy.

13 Id. at pp. 7-8. After the Court issued its order, plaintiff explicitly stated that she was not
14 seeking reconsideration of the Court's holding on its jurisdiction. See Dkt. #86
15 (Plaintiff's Motion for Reconsideration stating that she "does *not* request reconsideration
16 of any other aspect of the Court's order" other than the denial of class certification under
17 Fed. R. Civ. P. 23(b)(3)) (emphasis in original). If plaintiff is seeking reconsideration
18 now, her motion is untimely. The Court's prior order is the law of the case. Because the
19 Court has already held that it continues to have jurisdiction, plaintiff's motion must be
20 denied.

21 Several additional aspects of plaintiff's motion require brief discussion. Plaintiff
22 argues that any doubts regarding removability must be resolved in favor of remand.
23 However, this case was properly removed. The only issue is whether subsequent events
24 divested the Court of jurisdiction, which has been resolved. Plaintiff also notes that the
25 prior order and defendant's opposition to this motion rely in part on the legislative history

1 of CAFA. The Senate Report states,

2 Current law (that S. 5 does not alter), is also clear that, once a complaint is
3 properly removed to federal court, the federal court's jurisdiction cannot be
4 "ousted" by later events. Thus, for example, changes in the amount in controversy
5 after the complaint has been removed would not subject a lawsuit to be remanded
6 to state court. . . . Sound policy reasons support this rule. If a federal court's
7 jurisdiction could be ousted by events occurring after a case was removed,
8 plaintiffs who believed the tide was turning against them could simply always
9 amend their complaint months (or even years) into the litigation to require remand
10 to state court. . . . Similarly, a defendant prevailing on the merits always shows
11 that the amount in controversy, at the end of the day, is zero. Thus, if subsequent
12 events could unravel a federal court's jurisdiction, a defendant could prevail on the
13 merits, only to have the federal court conclude that it lacks jurisdiction to enter
14 judgment.

15 S. Rep. 109-14, 109th Cong., 1st Sess. 2005, S. Rep. 109-14, 2005 U.S.C.C.A.N. 3, *70-
16 71, **66-67. Plaintiff argues that the legislative history does not apply because she is not
17 trying to manipulate the forum. However, she filed her motion as a direct result of
18 defendant's motion for summary judgment and to decertify the class. Plaintiff states that
19 she is seeking remand because she believes that she can obtain a better result in state
20 court than in federal court,¹ which is the type of forum shopping that the legislative
21 history and removal/remand rules seek to avoid.

22 Plaintiff also argues that remand is preferable under these circumstances, citing in
23 support Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988). That case, unlike this
24 one, addressed whether a federal court should exercise pendent jurisdiction after all
25 federal claims have been eliminated. The basis for removal in this case was not federal
26 question jurisdiction, and this Court is not exercising pendent or supplemental
jurisdiction. Plaintiff also cites Ryan v. Cerullo, 343 F. Supp. 2d 157 (D. Conn. 2004),
but that case addressed clarifications to the amount in controversy as it existed *at the time*

¹ The Court will address plaintiff's argument about whether this Court should
apply federal or state law to her declaratory judgment claim in its order regarding
defendant's pending dispositive motion.

1 *of removal*. Plaintiff cites no relevant authority to support her argument that remand is
2 warranted.

3 **III. CONCLUSION**

4 For all of the foregoing reasons, the Court DENIES plaintiff's motion to remand
5 this case (Dkt. #103).

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7 DATED this 22nd day of March, 2007.

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10 Robert S. Lasnik
11 United States District Judge
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